

The Honorable James L. Robart

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

MICROSOFT CORPORATION, a Washington
corporation,

Plaintiff,

v.

MOTOROLA, INC., and MOTOROLA
MOBILITY, INC., and GENERAL
INSTRUMENT CORPORATION,

Defendants.

MOTOROLA MOBILITY, INC., and
GENERAL INSTRUMENT CORPORATION,

Plaintiffs/Counterclaim Defendant,

v.

MICROSOFT CORPORATION,

Defendant/Counterclaim Plaintiff.

CASE NO. C10-1823-JLR

MOTOROLA MOBILITY'S AND
GENERAL INSTRUMENT'S REPLY TO
MOTOROLA MOBILITY'S AND
GENERAL INSTRUMENT'S MOTION TO
FILE DOCUMENTS UNDER SEAL IN
SUPPORT OF THE DAUBERT MOTION
TO EXCLUDE CERTAIN TESTIMONY OF
PLAINTIFF'S EXPERTS DRs. LYNDE,
MURPHY, AND SIMCOE

**NOTED ON MOTION CALENDAR:
Friday, September 7, 2012**

I. INTRODUCTION

In Motorola Mobility's and General Instrument's Motion to File Documents Under Seal In Support of the *Daubert* Motion to Exclude Certain Testimony of Plaintiff's Experts Drs. Lynde, Murphy, and Simcoe ("Motion to Seal") (Dkt. No. 390), Motorola Mobility, Inc. and General Instrument Corporation (collectively, "Motorola") moved to seal Exhibits 3-8, 10, 21, and 33 to the Declaration of Samuel L. Brenner, as well as Motorola's *Daubert* Motion to Exclude Certain Testimony of Plaintiff's Experts Drs. Lynde, Murphy, and Simcoe ("*Daubert* Motion"), which references those confidential documents. However, in its Motion to Seal, Motorola also indicated that it believes that Exhibits 3-7, which consist of excerpts of the expert reports of Kevin M. Murphy, Matthew R. Lynde, and Timothy S. Simcoe, do not contain confidential material. (Dkt. No. 390 at 3.) In its Response (Dkt. No. 413), Microsoft agrees that Exhibits 3-4 and Exhibits 6-7 need not remain under seal. Accordingly, together with this Reply, Motorola is submitting:

1. A Revised Order Granting Motorola Mobility's and General Instrument's Motion to File Documents Under Seal in Support of the *Daubert* Motion to Exclude Certain Testimony of Plaintiff's Experts Drs. Lynde, Murphy, and Simcoe [Proposed], granting Motorola's Motion to Seal as to Exhibits 5, 10, 21, and 33, and
2. A replacement Redacted *Daubert* Motion to Exclude Certain Testimony of Plaintiff's Experts Drs. Lynde, Murphy, and Simcoe, that does not redact references to, quotes from, and discussions of Exhibits 3-4 and 6-7.

II. EXHIBIT 5 SHOULD BE SEALED

While Motorola initially stated that Exhibit 5 similarly does not contain confidential information, in its Response, Microsoft indicates that Exhibit 5 contains references to documents produced by non-parties pursuant to subpoenas issued in this Action that were designated as "Attorneys' Eyes Only under the Protective Order." (Dkt. No. 413 at 2, 4.) Motorola agrees that Exhibit 5 contains references to documents that contain the confidential information of non-parties to this action, and that disclosure of this information to third parties and other party employees not covered by the protective order would have the potential to lead to competitive harm. Due to presence of this confidential information, Exhibit 5 should be sealed in its entirety.

1 **III. CONCLUSION**

2 Because, as to Exhibits 5, 8, 10, 21, and 33 to the Declaration of Samuel L. Brenner, and as
 3 to the replacement redacted *Daubert* Motion, Motorola meets the standards for sealing as
 4 discussed in the moving brief (Dkt. No. 390), and because Microsoft does not oppose Motorola's
 5 Motion to File Documents Under Seal In Support of the *Daubert* Motion to Exclude Certain
 6 Testimony of Plaintiff's Experts Drs. Lynde, Murphy, and Simcoe to the extent Motorola seeks to
 7 seal those exhibits (*id.*), and offers additional support why documents should be sealed (Dkt.
 8 No. 413), Motorola respectfully requests that the Court grant the Motion as to Exhibits 5, 8, 10,
 9 21, and 33 to the Declaration of Samuel L. Brenner, and as to Motorola's *Daubert* Motion, as
 10 provided for in Motorola's revised Proposed Order, submitted herewith.

11 DATED this 7th day of September, 2012.

12 SUMMIT LAW GROUP PLLC

13 By /s/ Ralph H. Palumbo

14 Ralph H. Palumbo, WSBA #04751
 15 Philip S. McCune, WSBA #21081
 16 Lynn M. Engel, WSBA #21934
 17 *ralphp@summitlaw.com*
 18 *philm@summitlaw.com*
 19 *lynne@summitlaw.com*

20 By /s/ Thomas V. Miller

21 Thomas V. Miller
 22 MOTOROLA MOBILITY, INC.
 23 MD W4-150
 24 600 North U.S. Highway 45
 25 Libertyville, IL 60048-1286
 26 (847) 523-2162

And by

Jesse J. Jenner (*pro hac vice*)
Steven Pepe (*pro hac vice*)
Kevin J. Post (*pro hac vice*)
Ropes & Gray LLP
1211 Avenue of the Americas
New York, NY 10036-8704
(212) 596-9046
jesse.jenner@ropesgray.com
steven.pepe@ropesgray.com
kevin.post@ropesgray.com

James R. Batchelder (*pro hac vice*)
Norman H. Beamer (*pro hac vice*)
Ropes & Gray LLP
1900 University Avenue, 6th Floor
East Palo Alto, CA 94303-2284
(650) 617-4030
james.batchelder@ropesgray.com
norman.beamer@ropesgray.com

Paul M. Schoenhard (*pro hac vice*)
Ropes & Gray LLP
One Metro Center
700 12th Street NW, Suite 900
Washington, DC 20005-3948
(202) 508-4693
paul.schoenhard.@ropesgray.com

***Attorneys for Defendants Motorola Solutions,
Inc., Motorola Mobility, Inc., and General
Instrument Corporation***

CERTIFICATE OF SERVICE

I hereby certify that on this day I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following:

Arthur W. Harrigan, Jr., Esq.
Christopher T. Wion, Esq.
Shane P. Cramer, Esq.
Danielson, Harrigan, Leyh & Tollefson LLP
arthurh@dhl.com
chrisw@dhl.com
shanec@dhl.com

Richard A. Cederoth, Esq.
Brian R. Nester, Esq.
David T. Pritikin, Esq.
Douglas I. Lewis, Esq.
John W. McBride, Esq.
David Greenfield, Esq.
William H. Baumgartner, Jr., Esq.
David C. Giardina, Esq.
Carter G. Phillips, Esq.
Constantine L. Trela, Jr., Esq.
Ellen S. Robbins, Esq.
Nathaniel C. Love, Esq.
Sidley Austin LLP
rcederoth@sidley.com
bnester@sidley.com
dpritikin@sidley.com
dilewis@sidley.com
jwmcbride@sidley.com
david.greenfield@sidley.com
wbaumgartner@sidley.com
dgiardina@sidley.com
cphillips@sidley.com
ctrela@sidley.com
erobbins@sidley.com
nlove@sidley.com

T. Andrew Culbert, Esq.
David E. Killough, Esq.
Microsoft Corp.
andycu@microsoft.com
davkill@microsoft.com

DATED this 7th day of September, 2012.

/s/ Marcia A. Ripley

Marcia A. Ripley